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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 541 (LTS)

5 S.A.C. CAPITAL ADVISORS, L.P.,
6 S.A.C. CAPITAL ADVISORS LLC,
7 CR INTRINSIC INVESTORS, LLC,
8 SIGMA CAPITAL MANAGEMENT, LLC,

Defendants.

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9 New York, N.Y.
10 April 10, 2014
11 10:45 a.m.

Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

United States Attorney for the
Southern District of New York

16 ANTONIA APPS

17 ARLO DEVLIN-BROWN

JOHN ZACH

Assistant United States Attorneys

18 MATTHEW CALLAHAN

19 JAMES HINKLE

Special Assistant United States Attorneys

20 WILLKIE FARR & GALLAGHER LLP

Attorneys for Defendants

21 MARTIN B. KLOTZ

22 MICHAEL S. SCHACHTER

23 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Attorneys for Defendants

24 THEODORE V. WELLS, JR.

25 DANIEL J. KRAMER

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APPEARANCES (Continued)

ALSO PRESENT:

PETER A. NUSSBAUM, ESQ., S.A.C. Capital Advisors, L.P.

TERENCE HEALY, ESQ., Elan Pharmaceuticals, LLC

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1 (In open court)

2 (Case called)

3 THE COURT: Good morning, counsel.

4 Would you introduce yourselves, please

5 MS. APPS: Your Honor, Antonia Apps for the United
6 States. With me at counsel table are my colleagues, Assistant
7 United States Attorneys Arlo Devlin-Brown and John Zach, and
8 special assistants with the FBI Matthew Callahan and James
9 Hinkle. Good morning, your Honor.

10 THE COURT: Good morning, Ms. Apps, Mr. Devlin-Brown,
11 Mr. Zach, Special Agent Callahan and Special Agent Hinkle.

12 MR. KLOTZ: Good morning, your Honor. Martin Klotz
13 for the S.A.C. defendants.

14 THE COURT: Good morning, Mr. Klotz.

15 MR. WELLS: Good morning, your Honor. Ted Wells for
16 the S.A.C. defendants.

17 THE COURT: Good morning, Mr. Wells.

18 MR. KRAMER: Your Honor, Dan Kramer for S.A.C. as
19 well, good morning.

20 THE COURT: Good morning, Mr. Kramer.

21 MR. SCHACHTER: Good morning, your Honor. Michael
22 Schachter of behalf of the S.A.C. defendants.

23 THE COURT: Mr. Nussbaum, are you representing the
24 companies again?

25 MR. NUSSBAUM: Yes, I am.

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1 THE COURT: Good morning, Mr. Nussbaum.

2 MR. NUSSBAUM: Good morning, your Honor.

3 THE COURT: Please be seated.

4 We are here today for the Court's determination as to
5 whether to accept certain guilty pleas that were tendered on
6 November 8, 2013, whether to accept the proposed dispositions
7 that are detailed in the plea agreement entered into between
8 the government and the defendants, and further proceedings
9 consistent with the Court's determinations.

10 Ms. Apps, would you make a statement regarding the
11 government's position with respect to victim identification and
12 notification.

13 MS. APPS: Your Honor, actually, victim issues is one
14 matter Mr. Devlin-Brown is going to handle at this proceeding,
15 so he will address the Court with respect to that.

16 THE COURT: Thank you.

17 Mr. Devlin-Brown.

18 MR. DEVLIN-BROWN: Your Honor, as we said when the
19 case was initially brought, the government has been in contact
20 with a number of the victims, and our view is that the victims
21 in this case are the public companies whose information was
22 stolen. We have been in contact with them because we have had
23 various trials that have involved those victims. As your Honor
24 knows, we were recently informed, as was the Court, that Elan
25 Pharmaceuticals viewed itself as a victim that was entitled to

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1 restitution and put in a claim for restitution.

2 I know your Honor may intend to get to this later in
3 any event, but we were informed at the outset, just before
4 these proceedings began, that Elan has withdrawn that claim,
5 that they have reached a settlement with S.A.C. in which their
6 losses as a result of this offense that they would be entitled
7 to under the MVRA have been compensated. Whenever your Honor
8 wishes, if you wish, there is someone from Elan here who can
9 confirm that on the record.

10 THE COURT: I guess we might as well do that now since
11 we are on the topic of the claims. So would the representative
12 of Elan please come forward to the podium.

13 Good morning, sir.

14 MR. HEALY: Terence Healy on behalf of Elan
15 Pharmaceuticals LLC.

16 As your Honor knows, we submitted an MVRA request on
17 behalf of Elan. As Mr. Devlin-Brown, said we reached an
18 agreement with S.A.C. this morning under which Elan has been
19 restored for its losses, and we have withdrawn our request or
20 are asking the Court to withdraw our request and we will
21 resolve this matter separately.

22 THE COURT: Thank you, sir.

23 MR. HEALY: Thank you.

24 THE COURT: On November 8, 2013, the defendants
25 Capital Advisors LP, Capital Advisors LLC, CR Intrinsic

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1 Investors LLC and Sigma Capital Management LLC each proposed to
2 withdraw its plea of not guilty to the indictment labeled 13
3 Cr. 541 and enter a plea of guilty under an agreement pursuant
4 to Federal Rule of Criminal Procedure 11(c)(1)(C), which allows
5 the government to enter into an agreement that a specific
6 sentence is the appropriate disposition of the case and binds
7 the Court once the Court accepts the plea agreement. The Court
8 may either accept or reject the plea agreement.

9 On November 8, the Court reserved decision as to
10 whether it would accept the pleas and the plea agreement as
11 proposed.

12 I have received and reviewed the November 4, 2014
13 letter from the government to Judge Sullivan and the
14 undersigned; the November 1, 2014 plea agreement; the
15 stipulation and order of settlement in United States of America
16 v. Capital Advisors LP, et al., 13 Civ. 5182, which was so
17 ordered by Judge Sullivan on November 6, 2013; the presentence
18 investigation report for each of the defendants, each dated
19 April 1, 2014, including the recommendations and addenda; as
20 well as a letter dated March 27, 2014, from defense counsel.

21 I also received and reviewed correspondence relating
22 to the Elan Pharmaceuticals claim, namely, an April 3, 2014,
23 submission from Elan, I'm sorry, no. I take that back. So let
24 me start in the middle of that.

25 I have a March 27 submission sentencing submission

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1 from defense counsel, an April 3, 2014 letter from the
2 government, a letter from the Elan Pharmaceuticals dated March
3 26, 2014 requesting restitution, a letter from defendants
4 opposing restitution dated April 8, 2014, and a reply letter
5 from Elan dated April 9, 2014.

6 Are there any other written submissions that the
7 parties intend me to have considered in connection with the
8 determinations that will be made by the Court today?

9 MS. APPS: No, your Honor.

10 MR. KLOTZ: No, your Honor.

11 THE COURT: Thank you.

12 Mr. Nussbaum will be serving as the representative of
13 the defendants today, correct, Mr. Klotz?

14 MR. KLOTZ: That's correct, your Honor.

15 THE COURT: I have received written consents from each
16 of the companies designating Mr. Nussbaum, and those have been
17 marked as Court Exhibits. I believe you have them there,
18 Mr. Klotz.

19 MR. KLOTZ: We have the original court exhibits, your
20 Honor, yes.

21 THE COURT: Would you confirm with respect to each one
22 as I call it out that you have a signed original marked there.

23 First, for Capital Advisors LP, is that Court Exhibit
24 1?

25 MR. KLOTZ: It is, your Honor.

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1 THE COURT: Has that been executed?

2 MR. KLOTZ: It has.

3 THE COURT: By the general partner?

4 MR. KLOTZ: Yes.

5 THE COURT: For Capital Advisors LLC, Court Exhibit 2,
6 has that been executed by the members?

7 MR. KLOTZ: Yes, it has.

8 THE COURT: For CR Intrinsic Investors LLC, marked as
9 Court Exhibit 3, has that been executed by the member?

10 MR. KLOTZ: Yes, it has.

11 THE COURT: And for Sigma Capital Management LLC,
12 Court Exhibit 4, has that been executed by the member?

13 MR. KLOTZ: Yes, it has, your Honor.

14 THE COURT: Thank you.

15 At the end of the proceedings, Ms. Ng will take those
16 back from you.

17 THE COURT: The Court finds that the defendant's plea
18 allocutions as recorded and the government's factual proffers
19 as to the evidence that would be available should there be a
20 trial on the charges in the indictment in this case are
21 sufficient to establish that the defendants understand their
22 rights and are waiving them voluntarily and that each of the
23 guilty pleas to each count of the indictment is supported by an
24 independent basis in fact.

25 I now accept the guilty pleas of each of the defendant

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1 entities and adjudge them guilty of the crimes charged in
2 indictment 13 Cr. 541.

3 I will now consider whether the penalty provisions of
4 the November 1, 2013 plea agreement are sufficient to address
5 the statutory purposes of sentencing and determine whether the
6 Court will accept the plea agreement and stipulated penalties
7 pursuant to 11(c)(3)(A) of the plea agreement, reject the
8 proposed penalty provisions, and give the defendants the
9 opportunity to withdraw their pleas.

10 So I now turn to the sentencing-related portion of the
11 advocacy.

12 Mr. Klotz, have you read the presentence report and
13 discussed it with a representative or representatives of each
14 of the four defendants?

15 MR. KLOTZ: Yes, your Honor.

16 THE COURT: Mr. Nussbaum, have you reviewed the
17 presentence reports on behalf of each of the companies?

18 MR. NUSSBAUM: I have, your Honor.

19 THE COURT: Have you discussed them with the
20 companies' attorneys?

21 MR. NUSSBAUM: I have, your Honor.

22 THE COURT: Do you need to remain seated today?

23 MR. NUSSBAUM: No, I'm much better. Thank you, your
24 Honor.

25 THE COURT: I am glad to hear that. You can be seated

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1 now.

2 Mr. Klotz, do you have any objections or other issues
3 with respect to the content of any of the reports that you wish
4 to address at this time?

5 MR. KLOTZ: Judge, on the factual portions nothing
6 beyond what we brought to the probation department's attention,
7 and it was incorporated in their final report. I have a couple
8 of comments on the recommendations at the end, but I can
9 reserve those until later.

10 THE COURT: I will call on you to speak about those
11 later.

12 MR. KLOTZ: Sure.

13 THE COURT: Thank you.

14 Ms. Apps, does the government have any objections or
15 other issues with respect to the content of the report?

16 MS. APPS: It has no objections or issues, your Honor.

17 THE COURT: Thank you.

18 I do have a number of questions for the government.

19 First, what are the actual computed profit and avoided
20 loss amounts for each company based on the government's
21 investigations?

22 The reports that I have received speak merely in terms
23 of ranges and also don't translate those ranges into the
24 corresponding statutory maxima, which, as you know, for each
25 charge have a formula for the wire fraud charges that are \$1

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1 million or, if greater, twice the gains or losses for the
2 securities fraud charges; \$25 million or, if greater, twice the
3 gains or losses, and those alternative figures are not in the
4 reports for any company other than CR Investors.

5 So I would be grateful if you would enlighten me.

6 MS. APPS: Your Honor, let me start by saying as an
7 initial matter and in response to the first question that you
8 raised, in the order that your Honor issued, the guidelines
9 ranges for each entity set forth in the plea agreement and as
10 reflected in the probation reports reflects and includes all
11 the relevant conduct for all culpable persons to the extent
12 known to the government and includes all of those acting upon
13 information that was provided by culpable persons.

14 In short, it is not limited to the eight individuals
15 who have been convicted of insider trading, and of course that
16 includes, Mr. Matthew Martoma and Michael Steinberg. But the
17 guidelines analysis that is in the plea agreement and the
18 probation report includes all insider trading linked to the
19 conduct of all culpable persons regardless of the count in
20 which the profits were made or losses avoided.

21 Your Honor, would you like me to go through each
22 particular entity as you mentioned?

23 THE COURT: Yes, please.

24 MS. APPS: I will note in doing that, your Honor, that
25 consistent with the guidelines standard, the government in

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1 certain cases had to come up with a reasonable estimate of loss
2 given in some cases the age of the conduct involved, and that
3 is what we in large part did.

4 THE COURT: Actually, just before you go on,
5 nomenclature is another question that I have.

6 The plea agreement and some portions of the
7 presentence report speak in terms of profits and avoided
8 losses, and then other segments of the plea agreement speak in
9 terms of losses. So if the government computing avoided
10 losses -- is that what the concept is?

11 MS. APPS: Yes, your Honor. The methodology that we
12 employed included both profits earned from illegal insider
13 trading and avoided losses from illegal insider trading. So
14 the guidelines were based on both profits earned and losses
15 avoided.

16 THE COURT: So there is no netting?

17 MS. APPS: Correct.

18 THE COURT: And a compilation of profits and avoided
19 losses as positive figures to result in the ranges that you
20 computed?

21 MS. APPS: Correct. As a simple illustration, if
22 illegal profits were earned by one insider trader to the tune
23 of \$20 million, and another insider trader or even the same
24 insider trader had a different trade and there were avoided
25 losses of \$20 million, the profit and loss amount would

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1 therefore be \$40 million as a simple illustration to answer
2 your Honor's question.

3 THE COURT: Thank you.

4 MS. APPS: So, with respect to each of the entities
5 and I will just go down, your Honor.

6 Capital Advisors the approximate loss.

7 THE COURT: Is that LP or LLC.

8 MS. APPS: I beg your pardon. LP. Thank you.

9 Capital Advisors LP the approximate loss was a little
10 over \$7 million.

11 The same is true of Capital Advisors LLC.

12 With respect to CR Intrinsic Investors LLC -- and I
13 should say, your Honor, for the first two entities, of course,
14 the guidelines range in the plea agreement consistent with the
15 statement I just made, the guidelines ranges for the first two
16 entities was between \$7 and \$20 million.

17 For CR Intrinsic Investors LLC, for which the
18 guidelines range was \$200 to \$400 million, the approximate
19 losses were in the neighborhood of \$300 million.

20 Again, I am using "losses" as a shorthand for profits
21 and losses avoided.

22 THE COURT: Yes.

23 MS. APPS: For Sigma Capital Management LLC, your
24 Honor, the approximate or the reasonable estimate that the
25 government determined, which includes, of course, the conduct

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1 as I mentioned of all eight individuals and all culpable
2 individuals, and conduct of others who traded on culpable
3 information, the approximate amount is between \$7 and \$8
4 million.

5 THE COURT: And the range for that company?

6 MS. APPS: The range for that entity, your Honor, as
7 set forth in the plea agreement was between \$7 and \$20 million.

8 That is a very conservative estimate, your Honor. As
9 I said, there were some individuals whose conduct dated back to
10 1999 and 2002 who we were not able to ascertain figures, but we
11 do think that the overall numbers that I have presented to the
12 Court were a fair reflection of the information that was
13 available to the government.

14 THE COURT: So then the maximum fine amount for Count
15 One for each of LP and LLC would have been \$14 million?

16 MS. APPS: Yes, your Honor, if you double each.

17 THE COURT: For Count Two it would be the \$25 million
18 since that is higher than the \$14 million doubling.

19 And for CR Intrinsic, then, the maximum fine on each
20 count would have been \$600 million?

21 MS. APPS: Correct.

22 THE COURT: For Sigma the maximum fine would have been
23 \$14 million and \$25 million?

24 MS. APPS: Yes, your Honor.

25 THE COURT: With respect again to the consideration of

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1 action by all culpable persons, I am not asking for specific
2 headcounts, but for a sense of the factual basis of the
3 government's assertions that the conduct was pervasive in this
4 group of companies and its leadership, given that we have
5 convictions on pleas or trial of only eight identified
6 individuals, and the companies together had something on the
7 order of hundreds of employees?

8 MS. APPS: Your Honor, yes. There were, of course,
9 six guilty pleas and two individuals who have been convicted
10 after trials. Of course, there were a handful of other
11 individuals who were identified in the indictment and whose
12 conduct and trading has been included in the guidelines.

13 While it is true there are or at various times have
14 been approximately 800 people, nonetheless to have eight
15 criminal convictions in a single institution is remarkable.
16 And we would submit it is pervasive. It is certainly greater
17 than the number of individuals for any institution in our
18 experience, our collective knowledge I should say, to have so
19 many in a single institution. And so I think the appropriate
20 perspective here is to look at the number of proven instances
21 of insider trading and the number of individuals involved, and
22 we submit to the Court that that is in fact a large number
23 given the size of the institution and our experience dealing
24 with other institutions of similar size and indeed of all
25 sizes.

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1 THE COURT: Thank you.

2 I intend to instruct the probation department to
3 refine the language in certain of the paragraphs. So at this
4 time, based on the information that you have given to me, I
5 would like to go over the paragraphs that need to be changed.
6 They are parallel in each of the reports, so that shouldn't
7 take an inordinate amount of time.

8 In paragraph 25 of each report we have a reference to
9 losses from Freeman and Richard Lee's activities. That should
10 be profits and avoided losses; would that be correct?

11 MS. APPS: One moment, your Honor.

12 THE COURT: I'm sorry. I am looking at the Capital
13 Advisors LP report, but I think it's the same throughout.

14 MS. APPS: You said paragraph 5, your Honor?

15 THE COURT: 25.

16 MS. APPS: I beg your pardon.

17 Yes, your Honor. It should be profits and losses
18 avoided.

19 THE COURT: All right.

20 And the same in paragraph 27 with respect to Freeman?

21 MS. APPS: Yes, your Honor.

22 THE COURT: And in paragraph 30 with respect to
23 Steinberg, Horvath, Wang, and Choo-Beng Lee?

24 MS. APPS: Yes, your Honor.

25 THE COURT: In paragraph 32 as to Longueuil?

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1 MS. APPS: Yes, your Honor. It really should be a
2 global fix. Your Honor is quite right. The term used here is
3 losses, but it's meant to include both.

4 THE COURT: Yes.

5 And also 33. It should be a global fix except that
6 the reports aren't internally consistent either. So those are
7 the paragraphs in which we found that language.

8 And then with respect to the million dollar fine
9 maximums, paragraph 88 -- sorry, it's 89 in the LP report.
10 That should be Count One as 14 million and then Count Two as
11 25.

12 In LLC, it's paragraph 88. In Sigma Capital
13 Management LLC, it's paragraph 88. So that would be Count One
14 as 14 million.

15 And then in CR Investors, paragraph 87 as to Count One
16 lists 550, but it would be 600 as a more appropriate
17 approximation.

18 MS. APPS: Yes, your Honor.

19 THE COURT: And the same for Count Four.

20 Thank you.

21 I would like now to move on to a clarification on the
22 nonfinancial components of the proposed sentence.

23 First I would like you to address the relation of the
24 realistically expected -- well, the relationship of the
25 probation term proposed to be imposed to the expected business

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1 activity of the defendant entities and when the events that are
2 proposed to trigger the termination of probation have occurred
3 or are expected to occur.

4 MS. APPS: Your Honor, the plea agreement provides
5 that the maximum term of probation is five years, as your Honor
6 has pointed out. But the defendants may seek an earlier
7 termination if the entities are fully wound down.

8 Your Honor has noted that these four defendant
9 entities as set forth in the plea agreement as a condition of
10 the plea agreement will be terminating their investment
11 advisory business. In the process they are being wound down we
12 have been informed by S.A.C. capital.

13 Some of them are close to being finally wound down,
14 but at least one of those entities, Capital Advisors LP, it is
15 my understanding from defense counsel it will remain active, or
16 operational I should say, for some further time in order to
17 deal with investments that are less liquid and will take longer
18 to wind down.

19 But as to the exact date as to when that is
20 anticipated to happen, I think Mr. Klotz may be better able to
21 give an update on that, but in large part, with the exception
22 of the LP entity, the other entities are expected to wind down
23 relatively quickly. The LP entity may stay active for a
24 considerably longer period of time.

25 THE COURT: Has the restructuring transaction that was

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1 to take the investment activity to the new entities including
2 Point 72 and certain other entities, did that close or take
3 effect on April 7 as expected?

4 MR. KLOTZ: I think, again, my understanding is the
5 new entities are now in existence, if that is answering your
6 Honor's question.

7 I think Mr. Klotz is more familiar with exactly how
8 those entities are structured, but my understanding generally
9 is that they are ultimately owned by the same owner, the S.A.C.
10 owner who owns the four entity defendants, and those new
11 entities will be owned by the same owner and they are now
12 operational. I believe the date may be April 7, but I believe
13 Mr. Klotz can confirm.

14 THE COURT: Mr. Klotz, if you would.

15 MS. APPS: Just to be clear, they are not doing
16 third-party investment advisory business. They are out of the
17 business of investing third-party investors' money.

18 THE COURT: Yes. But even for the retained
19 proprietary investments, if you will, it's still multiples of
20 billions of dollars that will be in the market through the
21 activities of those companies?

22 MS. APPS: Yes.

23 THE COURT: Correct?

24 MS. APPS: Absolutely, your Honor.

25 MR. KLOTZ: The summary that Ms. Apps gave, your

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1 Honor, is essentially correct. The three of the four defendant
2 entities Advisors LLC, Sigma LLC and CR Intrinsic, are no
3 longer actively managing assets at all, and the new entities
4 the family office entities have gone into business effective
5 April 7, which was Monday.

6 Capital Advisors LP is no longer actively managing
7 outside money with the exception of a limited number of
8 difficult-to-liquidate assets that are held on behalf of
9 outside investors as well as inside investors. Other than
10 winding down those investments, Advisors LP will have no other
11 investment advisory activities and will not be part of the
12 family office going forward. That activity is a little bit
13 difficult to predict. We are in discussions with the
14 Securities and Exchange Commission about that, but we expect
15 that activity to spread over perhaps as much as -- well, it
16 could very well be a year and a half or more that it will take
17 to liquidate those investments, but they are a relatively
18 modest amount of money, and it's just the
19 difficult-to-liquidate investments that are at issue.

20 THE COURT: The proposed probation term -- just give
21 me one moment, thank you for bearing with me on this -- is
22 proposed to be terminated or required to be terminated upon the
23 Court's determination that a particular S.A.C. entity defendant
24 has been dissolved or has ceased conducting any securities
25 trading or asset management business? So should it be my

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1 expectation that I will be hearing promptly about the
2 dissolution of everything other than the LP defendant that has
3 the illiquid assets?

4 MR. KLOTZ: I am not certain how quickly we will be
5 before your Honor again. I don't believe that any of the
6 entities intend to dissolve. We will have to examine when they
7 have ceased doing any investment advisory activities.

8 But you're right, that the exception for sure will be
9 Advisors LP, which we expect to continue only with respect to
10 the illiquid side-pocket investments for a period probably
11 exceeding a year.

12 THE COURT: Would it be the Advisory LP's position
13 that the termination provision would not apply during the
14 illiquid investment wind-down because the managing of the
15 winding down of the illiquid investments would constitute an
16 asset management business?

17 MR. KLOTZ: Correct.

18 So we would not seek termination of probation as to
19 Advisors LP while it's continuing to perform that function.

20 THE COURT: Thank you.

21 MS. APPS: By the way, your Honor, also, just so you
22 know for the record, pursuant to Title 18 United States Code
23 Section 3564(c), there is a minimum period of one year for
24 early termination.

25 THE COURT: So the stipulated provision is subject to

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1 3564. Can you give me the specific reference again?

2 MS. APPS: Section 3564(c).

3 THE COURT: Thank you.

4 Now, Ms. Apps, with respect to the compliance
5 monitoring. First, I would like you to talk about the
6 structure, and then about the specific individual proposed to
7 be the monitor. As I read the agreement -- I want to be
8 careful to be sure that I understand this -- it appears that
9 the monitoring is a review or verification of structures and
10 procedures, but not oversight of implementation of procedures
11 in these or the new companies; would that be correct?

12 MS. APPS: Your Honor, one slight nuance to that
13 statement. If I could start by saying compliance is actually
14 addressed in two places in the plea agreement.

15 In one place, your Honor, and it's at page 7, as part
16 of the conditions of probation, the S.A.C. entity defendants
17 are required to maintain appropriate compliance procedures to
18 identify and prevent insider trading. While the word
19 implementation is not used there, I think it is certainly
20 anticipated by the parties, and I have confirmed this with
21 S.A.C. capital, so it is the understanding of the parties that
22 a proper compliance procedure and policy includes an
23 appropriate and effective implementation of such compliance
24 policy and procedure. The second place that compliance is
25 addressed in the agreement is earlier in the agreement, and it

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1 is page 3 and it addresses what your Honor alluded to, namely,
2 the hiring of an independent consultant and the procedures
3 involved with that.

4 If I may take a moment to describe what is involved
5 with that, your Honor, and to what entities it applies. That
6 condition applies beyond just the four S.A.C. entity defendants
7 in this case. It also applies under the agreement to successor
8 entities or any newly formed entities provided that they are
9 owned by the S.A.C. owner.

10 It is our understanding that the entities that your
11 Honor referenced earlier, Point 72 asset management, and there
12 are a few others that S.A.C. has created, those are subject to
13 the compliance conditions that I will elaborate on in a minute
14 that are on page 3.

15 As to those compliance conditions, your Honor,
16 implementation is clearly part of those compliance conditions
17 because the agreement provides that not only that S.A.C.
18 entities and the new entities must have appropriate compliance
19 policies and procedures, but that an independent compliance
20 consultant will be retained by S.A.C. Capital at their expense
21 to evaluate and review the compliance policies and procedures
22 and that includes "identifying any deficiencies in any insider
23 trading compliance procedures, and coming up with steps to
24 correct any such deficiencies." Obviously involved in that is
25 the effective implementation of the compliance policies and

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1 procedures.

2 The duties essentially are that compliance consultant
3 is to file within 45 days of retention a report to the United
4 States Attorney's Office that describes the insider trading
5 compliance procedures, any deficiencies identified, and any
6 steps that the entities need to take in order to correct those
7 deficiencies.

8 Thereafter, the compliance consultant is required to
9 file a six-month report that describes the progress that is
10 taken by the S.A.C. entities and any successor entities to
11 correct those identified deficiencies. Of course, as the
12 agreement continues, there is, at the discretion of the United
13 States Attorney's Office, a final report that the compliance
14 consultant may file with the United States Attorney's Office to
15 further update the office on the progress towards correcting
16 any deficiencies in the compliance policies and procedures.

17 So that condition, your Honor, which does apply to
18 successor entities is not limited just to the four S.A.C.
19 entity defendants, does involve implementation, we would submit
20 expressly involves implementation of the compliance procedures
21 in an effective and appropriate manner.

22 THE COURT: So six weeks into the life of the new
23 companies, the consultant is to review the policies and
24 procedures that are in place, and at that six-week point, or as
25 of the six-week point, the consultant is to identify any

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1 deficiencies. The six-month follow-up is for corrections of
2 the deficiencies that were identified at six weeks, but it is
3 not a comprehensive re-review. Am I correct?

4 MS. APPS: I think inherent in the six--- part of the
5 six-month report, and I think it's a fair reading of the plea
6 agreement is to continue to evaluate the compliance procedures
7 and policies, the steps that have been taken to correct them on
8 a holistic nature. And it wouldn't be limited to merely
9 checking whether a specific steps have been properly
10 implemented, but making a determination as a whole as to
11 whether the compliance procedures are effective and adequate to
12 prevent insider trading. In addition, of course, as it states
13 in the agreement, they are including things such as hiring,
14 information gathering, and training and the related practices.
15 So the mandate is quite broad, your Honor.

16 THE COURT: Mr. Klotz and Mr. Nussbaum, is that your
17 understanding of the scope of the powers and anticipated review
18 by the compliance consultant?

19 MR. KLOTZ: It is, your Honor.

20 THE COURT: Mr. Nussbaum?

21 MR. NUSSBAUM: It is, your Honor.

22 THE COURT: Thank you.

23 Ms. Apps, it has been the government's position in the
24 prosecutions, hasn't it, that these companies had, at least to
25 a certain extent facially compliant procedures, but didn't

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1 really implement them.

2 MS. APPS: Your Honor, the government's view of S.A.C.
3 Capital's compliance procedures is that, while they may have
4 had compliance policies on paper, they were plainly ineffective
5 at deterring or preventing insider trading. In fact, as
6 detailed in the government's sentencing memo, it was really not
7 until quite late in the charged period of the insider trading
8 scheme, which is from 1999 to 2010, that the defendants even
9 began to implement systems that would detect suspicious trading
10 or take a more active role in reviewing e-mails and other
11 electronic correspondence.

12 The government also found other failures in the hiring
13 process which are outlined in the government's sentencing
14 memorandum in its use of expert networks. So there were in the
15 government's view a series of deficiencies in the
16 implementation certainly, but in a very sort of active or
17 proactive approach that should be taken to compliance by an
18 institution like S.A.C. Capital.

19 THE COURT: The intention is that this consultant is
20 to look on an holistic basis at the beginning and at least the
21 six-month point for robust implementation and compliance with
22 the procedures that are developed?

23 MS. APPS: Yes, certainly with respect to the insider
24 trading, including the hiring, information gathering, and
25 training and related practices, yes.

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1 THE COURT: Thank you.

2 Would you speak about the identity and the
3 qualifications of the consultant and the criteria that
4 government has used in determining that the monitor who is
5 proposed is acceptable?

6 MS. APPS: Yes, your Honor.

7 The individual who has, I think he has now been
8 retained or is in the process of being retained by S.A.C.
9 entity defendants is Bart Schwartz, who is chairman and CEO of
10 a company called Guidepost Solutions. Pursuant to the plea
11 agreement Mr. Schwartz was proposed as a potential independent
12 compliance consultant to the government.

13 The government has, in fact, a formal committee
14 structure to evaluate candidates for these positions and
15 reviews materials and interviews individuals.

16 Among other things, the criteria for evaluating
17 candidates for positions like compliance consultant -- and
18 there are other types of positions that the government is
19 accustomed to evaluating individuals for, such as monitorships
20 and receiverships, but the criteria includes and is not limited
21 to: Reputation for integrity and independence of the
22 candidate; the experience of the candidate as a monitor or
23 whatever other position they are applying for, particularly
24 that experience in similar contexts involving federal
25 proceedings; a candidate's proposed approach to the task; the

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1 staff and team that will support the candidate in carrying out
2 the particular engagement; and, of course, evaluations from
3 references from prior monitorships.

4 THE COURT: The government has approved Mr. Schwartz,
5 is that correct?

6 MS. APPS: Mr. Schwartz has been approved to act as an
7 independent compliance consultant for S.A.C. Capital. That is
8 correct, your Honor.

9 THE COURT: The conflict issue that has been flagged
10 in the newspapers of late with respect to a deployment by one
11 of the new entities, I believe of a relative of a principal of
12 Guidepost, what is the government's view as to the significance
13 and/or elimination of that issue?

14 MS. APPS: Your Honor, it is our understanding, and
15 actually Mr. Schwartz is here in the courtroom today, but it is
16 our understanding that the relative who was employed by
17 Mr. Schwartz's firm had no substantive involvement at all in
18 relation to the investigative and compliance monitoring
19 division of Guidepost Solutions. In other words, he was not
20 and has not been in any way involved in the sort of projects
21 for which Mr. Schwartz was being considered for the purposes of
22 the compliance consultant position. So the government saw no
23 conflict in that role and sees no conflict today for
24 Mr. Schwartz in that role.

25 THE COURT: The government sees no conflict in the

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1 work and also sees no potential conflict or cause for concern
2 in the sort of broader gestalt of loyalty to persons who have
3 connections to the firm?

4 MS. APPS: No. Mr. Schwartz was questioned about
5 this, and the government determined there is no conflict and
6 sees no conflict as articulated by your Honor.

7 I will point out also that my understanding is this
8 individual was in the process in fact of leaving Guidepost
9 Solutions. That was information that was provided to us before
10 Mr. Schwartz was approved for the position and we understand
11 that is still true today.

12 THE COURT: Thank you.

13 Now --

14 MS. APPS: Sorry.

15 THE COURT: I am giving you a workout today.

16 MS. APPS: No worries.

17 THE COURT: Let us move on to the basis and structure
18 of the proposed forfeiture component. Specifically, I would
19 like to know what the status of the cases that were handled by
20 Judges Marrero and Baer are and whether any of the payments
21 that have previously been proposed or made and are proposed to
22 be used to offset the forfeiture obligation portion of the
23 sentence here are payments in the nature of civil penalties as
24 opposed to disgorgement or other types of funds that would
25 conceptually be within the scope of forfeiture.

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1 MS. APPS: Your Honor, as an initial matter, as your
2 Honor noted, particularly with the question that you posed in
3 the order that you issued, there is a criminal fine in the
4 criminal case of \$900 million and a civil forfeiture judgment
5 in the civil case of an additional \$900 million, so together
6 \$1.8 billion aggregate financial penalty on the defendants in
7 this case.

8 THE COURT: Yes. But for the existence of the
9 separate civil litigation, given the nature of these crimes and
10 the provisions of Title 18, I would be obliged to impose a
11 forfeiture obligation directly in the criminal case in addition
12 to any fines, correct?

13 MS. APPS: Of course, forfeiture is discretionary in
14 any criminal case, but really the larger point I was trying to
15 make, your Honor --

16 THE COURT: I thought that the forfeiture of proceeds
17 of the criminal activity was mandatory?

18 MS. APPS: I should say, the government does not
19 always have to -- you're quite correct, your Honor. The
20 government does not always have to seek forfeiture in every
21 criminal case.

22 THE COURT: It is correct that it's discretionary as
23 to whether you put in in the indictment, but if it's in the
24 indictment.

25 MS. APPS: That is what I meant to say, your Honor. I

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1 apologize.

2 THE COURT: Yes.

3 MS. APPS: The larger point I was trying to make, your
4 Honor, is simply that when you look at the -- of course, this
5 was a global resolution between the parties. The resolution of
6 the criminal case and the civil forfeiture case occurred at the
7 same time. It was intended to be a single, integrated
8 resolution.

9 The civil forfeiture case that was filed before Judge
10 Sullivan was in fact of a nature that was far broader than the
11 criminal forfeiture provision in the indictment. The civil
12 case was seeking forfeiture of property involved in money
13 laundering, which included insider trading proceeds and the
14 property that facilitated the insider trading and money
15 laundering.

16 So the civil forfeiture judgment of \$900 million was,
17 we would submit, far greater than the criminal forfeiture that
18 could have been obtained through the criminal proceeding and is
19 in many multiples, as we have noted before, of the losses
20 involved and the trading profits and losses involved in the
21 case.

22 With respect to your question about the relationship
23 to the SEC actions and the credit that is given to S.A.C.
24 Capital for the \$616 million that has been committed to pay to
25 the Securities and Exchange Commission. As I understand, the

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1 latest is Judge Baer has approved and signed off on the
2 judgment against Sigma Capital Management LLC, and Judge
3 Marrero has issued an opinion I think saying that he agreed to
4 approve the settlement in the civil case, but he is subject to
5 a pending Second Circuit decision is my understanding of the
6 Judge Marrero decision.

7 So those amounts are permitted to be paid by S.A.C.
8 Capital, and for that reason we gave a credit to S.A.C. Capital
9 and the entity defendants in the related civil forfeiture
10 action. And the amount to be paid to the SEC of course is \$616
11 million, which leaves, of the \$900 million, approximately \$284
12 million to be paid, which in and of itself is a very large
13 forfeiture amount. Certainly that number alone exceeds the
14 sort of criminal forfeiture penalty that would have been
15 obtained in the criminal case alone.

16 THE COURT: So the basis for a criminal forfeiture
17 penalty in this criminal case in the government's view and
18 based on its investigations would have been limited to the \$321
19 million or so figures that we discuss at the outset here, so
20 that the Court here ought not properly to be concerned about
21 the designation of amounts clearly in excess of that base
22 figure as civil penalties as, for instance, in the Sigma
23 capital and S.A.C. Select judgment, which was split, \$13
24 million split evenly between disgorgement and civil penalty?

25 (Continued on next page)

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1 MS. APPS: Your Honor, the only point that I would
2 disagree with your Honor is in fact I think that even less
3 could have been recovered in the criminal action. It is at
4 least in dispute or it's arguable that the government may not
5 recover avoided losses or may not recover gains to innocent
6 third party investors who had no involvement in the criminal
7 conduct under recent Second Circuit precedent. So there would
8 be at least a dispute as to whether or not the government could
9 recover those items, and those form a portion of the
10 300 million that we talked about earlier today as the total
11 number for profits gained and losses avoided.

12 And because the forfeiture provision in the criminal
13 case is based on the insider trading conduct that is therein
14 alleged and the wire fraud conduct that is alleged, whereas as
15 I mentioned the civil forfeiture case has a broader nature and
16 is based on, as I discussed, all property involved in money
17 laundering and which is broader than what could have been
18 obtained in the criminal case and has ultimately resulted in a
19 payment of a forfeiture amount covering all proceeds of the
20 criminal activity, it resulted in a payment that was multiple
21 times what I think would have been obtained solely through the
22 criminal proceeding.

23 THE COURT: Thank you. That actually concludes for
24 the moment my series of questions for you, and I thank you for
25 your candor and responsiveness to the Court's concerns.

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1 As I get ready to invite counsel to speak further to
2 the merits of the proposed plea agreement, I remind you that in
3 the order I indicated that I have concluded that I have to
4 consider whether an upward departure from the guideline fine
5 range is appropriate under 8C4.10, and I raise that because of
6 the apparent failures of the organizations to maintain and
7 implement effective mandatory compliance programs and detect
8 and prevent the crimes of conviction. And so I would hope that
9 I would hear from both sides here whether you believe that that
10 issue is addressed sufficiently by the amounts stipulated in
11 the plea agreement, and I would also ask that any specific
12 objections to the sentencing recommendations of the probation
13 department be addressed in remarks as well.

14 And so, with that, Mr. Klotz, would you like to speak
15 first?

16 MR. KLOTZ: Yes, your Honor.

17 With respect to the upward departure, the 8C4.10,
18 we've been unable to find any law that specifically
19 addresses -- it's the second prong of that that I think your
20 Honor is interested in -- whether that applies here. My
21 reading of that provision is it only applies to an institution
22 which has a legal requirement that it have a compliance
23 program, which I understand to mean there is a statute that
24 says if you're a particular type of entity, you're required to
25 have a compliance program.

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1 THE COURT: There's no such requirement for an
2 investment advisory business?

3 MR. KLOTZ: There is for a registered investment
4 business. S.A.C. was not registered at the time of the conduct
5 in question. Obviously, we had a compliance program.
6 Obviously, we believed we took compliance seriously. But there
7 was not actually a legal mandate that we have that compliance
8 program and so I don't think -- I haven't found any case law
9 one way or the other, but I think that's the natural reading of
10 that provision and I don't think it applies to us because we
11 only became a registered entity in 2012, which is after the
12 period of time in question here.

13 I would also point out that to the extent that there
14 is any issue, the fine that we have agreed to is in fact an
15 above-guidelines fine in any event. So I'm not certain that a
16 contrary conclusion would lead to a different view of the plea
17 agreement.

18 And if you wanted me to address the probation
19 department's recommendations as long as I'm speaking.

20 THE COURT: Yes, anything and everything you'd like
21 the Court to hear.

22 MR. KLOTZ: Sure. So there were two portions of the
23 probation department recommendations that I thought I ought to
24 bring to your Honor's attention.

25 First, the probation department recommended that the

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1 fine be payable within 30 days of imposition of sentence. The
2 plea agreement provides that the fine is payable within 90 days
3 of imposition of sentence. I've spoken to the probation
4 department. They agree that was simply an oversight. They did
5 not intend to depart from what the plea agreement provided.

6 So I would simply ask your Honor in imposing sentence,
7 assuming your Honor approves the plea agreement, to make clear
8 that the payment would be due consistent with the plea
9 agreement, namely, 90 days after imposition of sentence.

10 Then, secondly, the probation department had a
11 specific condition of probation that related to providing the
12 department with financial information about the defendants.
13 And, again, the plea agreement was an attempt by the parties to
14 specify all of the conditions of probation and it did so, both
15 regular conditions and it specified one special condition.
16 Providing financial information was not a special condition.

17 I haven't spoken to the probation department about
18 that provision. It's my understanding that in many
19 circumstances they recommend it. In this case it's actually
20 not provided for in the plea agreement and would go beyond the
21 plea agreement. And, in our view, it's really not necessary
22 because, to begin with, we provided extensive financial
23 information to the probation department in connection with
24 their preparing the report and the fine is going to be paid
25 within 90 days in any event. So I think ongoing financial

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1 information is not needed, but the main point is it's not
2 provided for in the plea agreement.

3 THE COURT: And so the plea agreement provision in
4 terms of supervision during a probationary period is
5 supervision via the compliance monitoring arrangement with the
6 U.S. Attorney's Office only and not supervision by the
7 probation arm of the judicial branch of compliance with
8 mandatory conditions of probation such as -- I'm sorry.

9 MR. KLOTZ: I didn't mean to interrupt.

10 THE COURT: I believe that even for an entity
11 defendant, compliance with federal, state, and local laws is a
12 mandatory statutory condition of probation. And so at a
13 minimum I would normally expect that my probation department
14 would be in some relation with an entity that is under
15 supervision. But, as you say, this is an 11(c)(1)(C) plea
16 agreement and so I have to take it as a whole or not.

17 So your position and understanding as to the deal is
18 that the probation department would not be involved in any way
19 in active supervision?

20 MR. KLOTZ: I'm not making a point that goes that far,
21 your Honor. We do contemplate that we would be subject to
22 probation department supervision. That supervision would
23 include the standard provisions, whatever they are, and also
24 there's a provision in the plea agreement that we're required
25 to maintain effective compliance procedures. That's a

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1 condition of probation.

2 What is not a condition of probation that we agreed to
3 is that we regularly provide financial information which the
4 probation department recommends as a special condition, and I'm
5 simply saying that ought not to be included. We ought to be
6 subject to the standard conditions. But there will be
7 probation department supervision, and we're not suggesting
8 otherwise.

9 THE COURT: Thank you.

10 MR. KLOTZ: And beyond that, Judge, everything that I
11 had to say on behalf of the defendants I put in my letter, and
12 I would urge you to accept the plea agreement.

13 THE COURT: Thank you.

14 Ms. Apps.

15 MS. APPS: Which point would you like me to address
16 first, your Honor?

17 THE COURT: This one is up to you.

18 MS. APPS: Just to finish.

19 The plea agreement does provide that the S.A.C. entity
20 defendants will be subject during term of probation to, first,
21 applicable mandatory conditions of probation, as well as,
22 second, the compliance condition, the requirement of
23 maintaining adequate compliance policies that we discussed
24 earlier.

25 At the time of the negotiation of the plea agreement

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1 and previously, S.A.C. Capital had provided to us an enormous
2 amount of financial information. So we did not, particularly
3 in light of the nature of these crimes, which is inside trading
4 rather than accounting fraud or some other type of fraud, we
5 did not see it necessary to include that as a provision
6 notwithstanding probation has requested that that condition to
7 supply financial statements be included as part of the terms of
8 the probation.

9 Now, your Honor, just from an overall perspective, as
10 we noted in our sentencing memorandum, when you take account,
11 we would respectfully submit that the Court should accept and
12 adopt the plea agreement and impose a sentence in accordance
13 with the terms set forth in the plea agreement which includes a
14 criminal fine of \$900 million, which is, to the knowledge of
15 the government, the largest criminal fine imposed in an insider
16 trading case in history.

17 When you take that together, as we submit you should,
18 with the judgment in the forfeiture action which imposes an
19 additional \$900 million in forfeiture, obviously, with credit
20 for amounts committed to be paid to the Securities and Exchange
21 Commission by two of the S.A.C. entity defendants, taken
22 together, that large criminal fine and forfeiture amount for an
23 aggregate of \$1.8 billion serves all of the goals of
24 sentencing. It imposes an appropriate punishment. It acts to
25 deter, both specific deterrence as to the S.A.C. entity

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1 defendants and the successors, and general deterrence to other
2 financial institutions as a whole.

3 And, finally, your Honor, it is appropriate in light
4 of the conduct that is set forth in the indictment and
5 represents appropriate punishment, particularly when taken with
6 the nonfinancial penalties which we've been discussing today.

7 THE COURT: Thank you.

8 Since the request for restitution by Elan has been
9 withdrawn, we need not address that.

10 Mr. Nussbaum, is there anything that you would like to
11 say on behalf of the defendants?

12 MR. NUSSBAUM: Yes. Very briefly, your Honor. Thank
13 you.

14 As we said in our letter to the Court, we accept
15 responsibility for the misconduct of our employees that has
16 brought us before your Honor. We have paid and are paying a
17 significant penalty for this misconduct. This includes not
18 only the heavy penalty that this Court may impose and the other
19 sanctions that have been imposed on us, but also the stain on
20 the reputations of the honest and hardworking people at our
21 firm. We are absolutely committed to moving forward in a
22 positive and responsible manner.

23 Thank you.

24 THE COURT: Thank you.

25 At this point we will take a brief ten-minute recess

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1 and then we will reconvene. Thank you.

2 (Recess)

3 THE COURT: I have reviewed carefully all of the
4 submissions in advance of today and listened carefully to
5 everything that has been said here today.

6 I adopt the factual recitation that is set forth in
7 each of the presentence reports with the anticipated changes
8 that we've previously identified.

9 This Court has discretion taking into account the
10 applicable statutory provisions in exercising its power under
11 Title 18 of United States Code Section 3553(a) to determine the
12 particular sentence to be imposed in each particular case.
13 Section 3553(a) requires the Court to consider a number of
14 factors and sentencing goals and requires the Court to impose
15 sentences that are sufficient but not greater than necessary to
16 comply with the statutory sentencing purposes.

17 In light of this obligation, I have considered
18 carefully the proposed disposition within the framework of
19 Section 3553(a) and its factors, and I will speak to some of
20 those factors.

21 First, with respect to the provisions of the
22 sentencing guidelines as to S.A.C. Capital Advisors LP, I
23 conclude that the applicable guideline offense level is 28, the
24 culpability score is seven for the reasons that are outlined in
25 the presentence report, and I adopt the grouping of charges

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1 analysis as set forth in the presentence report. Accordingly,
2 the advisory guideline range for a fine for this defendant is
3 \$8,820,000 to \$17,640,000.

4 As to S.A.C. Capital Advisors LLC, the guideline
5 offense level is 28 and the culpability score is seven, as set
6 forth in the presentence report, and I adopt the grouping of
7 charges analysis in the presentence report. Therefore, the
8 advisory guideline fine range for this defendant is \$8,820,000
9 to \$17,640,000.

10 As to CR Intrinsic Investors LLC, the applicable
11 guideline offense level is 36 and the culpability score is
12 seven. I adopt the grouping of charges analysis set forth in
13 the presentence report, and the advisory guideline fine range
14 for this defendant is \$385 million to \$770 million.

15 And as to SIGMA Capital Management LLC, the applicable
16 guideline offense level is 28, the culpability score is seven.
17 I adopt the grouping of charges analysis, and the advisory
18 guideline range for a fine for this defendant is \$8,820,000 to
19 \$17,640,000.

20 I have used the November 2013 edition of the
21 guidelines manual in reaching these determinations.

22 The fines proposed in the plea agreement exceed those
23 recommended by the guidelines. I have considered whether an
24 upward departure from the guidelines is necessary. And in view
25 of the fact that the proposed fines exceed the guideline level

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1 and the question and the minimum as to whether the predicates
2 for the upward departure are present in this case, I have
3 determined that no further upward departure is necessary.

4 I have also considered carefully all of the statutory
5 sentencing factors and goals and the information put before me
6 in light of those factors and goals in deliberating as to
7 whether to accept the proposed plea agreements. I will address
8 briefly certain of the statutory factors.

9 First, the nature and circumstances of the offense.
10 These defendants committed very serious financial crimes of a
11 type that can easily undermine the integrity and the public
12 perception of our nation's securities exchanges.

13 S.A.C. Capital Advisors LP is responsible for profits
14 and avoided losses from insider trading of approximately
15 \$7 million.

16 S.A.C. Capital Advisors LLC is responsible for profits
17 and avoided losses of approximately \$7 million.

18 SIGMA Capital Management similarly is responsible for
19 profits and avoided losses of approximately \$7 million.

20 And CR Intrinsic Investors LLC is responsible for the
21 staggering amount of approximately \$300 million in profits and
22 avoided losses.

23 Through their hiring practices, these defendants
24 actively sought to engage portfolio managers and analysts who
25 had shown that they had access to material nonpublic

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1 information. Those managers with insider connections did not
2 hesitate to encourage and exploit the willingness of the
3 insiders to breach their own duties to the companies for which
4 they worked.

5 The defendants failed to ensure that the recruits had
6 not and would not use such inside information to trade, and
7 management created and maintained a culture that rewarded this
8 illegal activity. Management addressed only the merits of
9 trades, the financial merits of trades, I should say, rather
10 than the source of the information and, in doing so, ignored
11 blatant red flags concerning the nature of the material
12 nonpublic information and how it was obtained by employees.

13 The defendants had some facially appropriate
14 compliance policies and procedures but did not implement them
15 to ensure that employees would not trade on material nonpublic
16 information until at least 2010. These crimes clearly were
17 motivated by greed. And these breaches of the public trust
18 require significant penalties commensurate with the magnitude
19 of the crimes which will, insofar as the law permits, punish
20 these defendants and deter those involved with them and others
21 from engaging in insider trading in the future.

22 There is sound reason for concern for promotion of
23 respect for the law and deterrence in addition to the obvious
24 need to ensure punishment and the forfeiture of ill-gotten
25 gains. The Court has considered these issues in evaluating the

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1 proposed disposition in light of the measures that are
2 available to it in the context of the government's decision to
3 prosecute these entities. None of the individuals involved is
4 before the Court today.

5 The sentencing tools available to the Court in this
6 case are thus limited to the fines imposed on the entities,
7 probationary terms and conditions that apply to the defendant
8 entities, and forfeiture by the entities.

9 As to the defendants' history and characteristics, the
10 defendants were once a group of very well-respected hedge funds
11 earning returns often in excess of 25 percent. We now know how
12 some of that was achieved. And the growth of these funds over
13 30 years or almost 30 years was in part, we now know, due to
14 the illegal use of material nonpublic information by their
15 employees.

16 The defendants will still be significant investors in
17 the market with billions of dollars under management, a very
18 small proportion of which is attributable to third party
19 investors. The defendants have stated openly and publicly that
20 they are deeply remorseful for the offense conduct and have
21 stated that they take full responsibility for the misconduct of
22 the identified employees.

23 As I have already explained, the defendants' crimes
24 were striking in their magnitude and strikingly indicative of
25 lack of respect for the law. The proposed disposition

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1 addresses these factors of promotion of respect for the law and
2 deterrence and punishment with fines that exceed the guidelines
3 ranges, the requirement that these defendant entities withdraw
4 from the investment management business, outside review of
5 their compliance procedures and those of the successor
6 companies that have been established to carry on investing for
7 the Cohen family, and probation terms that will expire with the
8 dissolution or termination of trading activities by these
9 defendant companies which have already, as a practical matter,
10 been restructured out of active participation in the markets.

11 But the Court does note, as Ms. Apps has explained
12 here, that the plea agreement provides for certain compliance
13 and review undertakings that extend to successor and affiliated
14 entities. The gross amount of the fines and forfeiture are
15 together unprecedented in insider trading cases.

16 And so having considered the underlying facts in light
17 of all of the Section 3553(a) factors, including the types and
18 statutory boundaries of the sentencing tools that are available
19 to the Court in connection with the crimes charged and to which
20 the defendants have pleaded guilty, the Court finds that the
21 significant penalties outlined in the plea agreement, including
22 a five-year probation term and a total fine and forfeiture
23 value of \$1.8 billion, are reasonable within the meaning of the
24 law, sufficient, appropriate, and no greater than necessary to
25 satisfy the statutory purposes of sentencing.

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1 Accordingly, the Court accepts the plea agreement
2 between the government and S.A.C. Capital Advisors LP, S.A.C.
3 Capital Advisors LLC, CR Intrinsic Investors LLC, and SIGMA
4 Capital Management LLC.

5 The Court finds that the defendants are required to
6 forfeit to the United States \$900 million, representing the
7 proceeds that they obtained directly or indirectly as a result
8 of their criminal activity and the global resolution of the
9 civil litigation issues as well. And this forfeiture
10 obligation is to be satisfied in the manner set forth in the
11 plea agreement, which I will review in a moment.

12 I will now state the sentences that I intend to impose
13 pursuant to the plea agreement and Federal Rules of Criminal
14 Procedure 11(c)(1)(C) and 11(c)(4).

15 It is the judgment of this Court that each defendant,
16 namely, S.A.C. Capital Advisors LP, S.A.C. Capital Advisors
17 LLC, CR Intrinsic Investors LLC, and SIGMA Capital Management
18 LLC, is to serve five years of probation on each of its two
19 counts of conviction, such terms of probation to run
20 concurrently, subject to the statutory minimum term required by
21 Title 18 of the United States Code Section 3564(c).

22 The probation with respect to a particular S.A.C.
23 entity defendant will be terminated and any remaining term
24 discharged upon the Court's determination that such defendant
25 has, one, been dissolved; or, two, has ceased conducting any

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1 securities trading or asset management business.

2 During the probation term each defendant will be
3 subject to the following mandatory condition of probation.

4 The defendant shall not commit another federal, state,
5 or local crime.

6 S.A.C. Capital Advisors LP, S.A.C. Capital Advisors
7 LLC, CR Intrinsic Investors LLC, and SIGMA Capital Management
8 LLC must each also meet the following special conditions.

9 Each of the defendants must cease operating as an
10 investment advisor and must not accept any additional funds
11 from third party investors. The timing and manner in which the
12 investment advisory businesses of the defendants wind down,
13 their registrations become suspended or revoked, and
14 discontinue operations shall be on terms satisfactory to the
15 Securities and Exchange Commission.

16 The defendants must maintain compliance policies and
17 procedures reasonably designed to identify and prevent insider
18 trading.

19 The defendants must retain a compliance consultant at
20 their own expense no later than ten days from today to evaluate
21 and report on the insider trading compliance procedures of the
22 defendants, affiliates, and any other existing or newly formed
23 entities owned or controlled by the owners of the defendants
24 involved in the trading of securities.

25 And I will refer to this group of entities

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collectively as the entities subject to compliance review.

The compliance consultant shall:

1. Promptly review the insider trading compliance procedures of the entities subject to compliance review.

2. Identify any deficiencies in insider trading compliance procedures and provide the entities subject to compliance review with an opportunity to correct these deficiencies.

3. File within 45 days of retention a report to the Office of the United States Attorney that describes any insider trading compliance deficiencies identified and any steps the entities subject to compliance review have taken or agreed to take to correct these deficiencies.

4. File within six months of retention a report to the Office of the United States Attorney that describes progress by the entities subject to compliance review to correct the identified deficiencies.

5. File, if deemed necessary by the Office of the United States Attorney in its sole discretion, a final report to that office that addresses any continuing deficiencies identified in the six-month report.

Defendants will be supervised by the district in which they operate their respective businesses.

S.A.C. Capital Advisors LP will be ordered to pay a fine in the amount of \$1 million as to Count One and

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1 \$25 million as to Count Two.

2 S.A.C. Capital Advisors LLC will be ordered to pay a
3 fine of \$1 million as to Count One and \$25 million as to Count
4 Three.

5 CR Intrinsic Investors LLC will be ordered to pay a
6 fine of \$411 million as to Count One and \$411 million as to
7 Count Four.

8 SIGMA Capital Management LLC will be ordered to pay a
9 fine of \$1 million as to Count One and \$25 million as to Count
10 Five.

11 These obligations recognize appropriately the gravity
12 of the defendants' offenses and must be paid no later than 90
13 days from today.

14 I will further order that each defendant pay to the
15 United States a special assessment in the amount of \$800, that
16 is, \$400 for each of the two counts of conviction as to each
17 defendant and that is payable immediately.

18 The defendants must inform the probation department of
19 any change in financial circumstances and notify the United
20 States attorney for this district within 30 days of any change
21 of mailing address that occurs while any portion of the special
22 assessment remains unpaid.

23 I will order the defendants to forfeit \$900 million in
24 connection with the stipulation and order of settlement, docket
25 entry No. 50, in the matter of United States v. S.A.C. Capital

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1 Advisors LP, No. 13 Civ. 5182 here in the Southern District of
2 New York. This obligation includes \$616 million that certain
3 of the defendants have already agreed to forfeit to resolve two
4 parallel actions by the Securities and Exchange Commission
5 involving some of the instant offense conduct. Those actions
6 are SEC v. CR Intrinsic Investors LLC, 12 Civ. 8466(VM), and
7 SEC v. SIGMA Capital Management LLP, 13 Civ. 1740(HB).

8 The Court will not impose a forfeiture obligation over
9 and above that called for by the settlement agreement that I
10 referred to a moment ago.

11 I believe that these sentences are reasonable,
12 sufficient, appropriate, and no greater than necessary to
13 satisfy the statutory purposes of sentencing which include
14 punishment and deterrence.

15 Counsel, does any of you know of any legal reason why
16 the sentences should not be imposed as stated?

17 MR. KLOTZ: No, your Honor.

18 MS. APPS: No, your Honor.

19 THE COURT: The sentences as stated are imposed.

20 To the extent the defendants have not given up their
21 rights to appeal through their guilty pleas, they have the
22 rights to appeal these sentences. If the defendants are unable
23 to pay the cost of an appeal, they may apply for leave to
24 appeal in forma pauperis. At a defendant's request, the clerk
25 of court will file a notice of appeal. Any notice of appeal

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1 must be filed within 14 days of the judgment of conviction.

2 Ms. Apps, are there any remaining counts or underlying
3 indictments that need to be addressed?

4 MS. APPS: There are no counts to be dismissed, your
5 Honor.

6 THE COURT: Thank you.

7 I will direct that the parties and the sentencing
8 commission be furnished with amended copies of the presentence
9 reports reflecting the corrections discussed here today. All
10 other copies of the reports must remain appropriately
11 confidential. If an appeal is taken, counsel on appeal are to
12 be permitted access to the reports.

13 I would like to commend and thank counsel for their
14 work in negotiating and bringing before this Court and making
15 their record as to the resolution of these charges here today.
16 And I hope that going forward the successor entities can and
17 will operate in the market as exemplars of not only financial
18 acumen but of respect and compliance with the laws.

19 I thank you all.

20 Is there anything further that we should take up
21 together?

22 MS. APPS: Nothing from the government, your Honor.

23 MR. KLOTZ: No, your Honor.

24 THE COURT: Thank you. We're adjourned.

25 o0o